

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17642
[REDACTED],)	
)	DECISION
Petitioners.)	
<hr style="width: 40%; margin-left: 0;"/>)	

On August 14, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 2000 and 2001 in the total amount of \$8,380.

On September 29, 2003, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to submit additional information in writing for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayers filed their 2000 and 2001 Idaho income tax returns reporting a deduction for Idaho capital gains. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' returns and determined the Idaho capital gains deduction was not allowable on the installment payments received in those years. The Bureau adjusted the taxpayers' returns and sent them a Notice of Deficiency Determination.

After receiving the notice, the taxpayers contacted the Bureau and discussed the issue. The taxpayers and the Bureau came to an understanding on the Idaho capital gains adjustment but argued the addition of interest to the deficiency. The Bureau stated that interest was required by the Idaho Code in the case of a deficiency in tax, and therefore it could not be waived. The taxpayers felt the law concerning the Idaho capital gains deduction was vague and unfair. They stated the Tax Commission was delinquent in correcting their Idaho income tax returns because it had all the

information to make the correction at the time the returns were filed. Consequently, the taxpayers protested the Bureau's determination.

The Tax Commission reviewed the file and the taxpayers' statements. The Tax Commission finds the Bureau properly adjusted the taxpayers' 2000 and 2001 returns and that the addition of interest was correct and in accordance with the Idaho Code. The Tax Commission makes this finding based upon the following.

In 1994, the taxpayers sold real property on the installment basis. The taxpayers purchased this property in July 1991. The taxpayers realized a gain on the sale and reported it as a capital gain.

Idaho Code section 63-3022H for 1994 stated in pertinent part,

Deduction of capital gains. (1) If for any taxable year an individual taxpayer has a net capital gain which has not already been deducted from gross income in determining Idaho adjusted income, sixty percent (60%) of the net capital gain (but not more than the net gain reported on the return) shall be a deduction from Idaho adjusted income.

(2) For the purpose of this section capital gains deductions shall be allowed only for property which had an Idaho situs at the time of sale, as follows:

(a) Capital gains from sales of real property which has been held for a minimum of five (5) years . . .

Clearly, the law stated that to qualify for the Idaho capital gains deduction the property had to be in Idaho at the time of sale and held for a minimum of five years. The taxpayers held the property from July 1991 to December 1994, less than the required five-year minimum. Therefore, the gain on the sale does not qualify for the Idaho capital gains deduction.

For 2000 and 2001, Idaho Code section 63-3022H(3) stated,

As used in this section "qualified property" means the following property having an Idaho situs at the time of sale:

(a) Real property held at least eighteen (18) months;

The taxpayers argued that the law is vague because clearly according to the 2000 and 2001 code they held the property long enough to qualify for the Idaho capital gains deduction. However, the taxpayers are applying a current law to a past sale. In both the 1994 and 2000 through 2001 versions of the code is the phrase "at the time of sale." From this language, the taxpayers should have taken notice that the applicable law was the law for the year of sale. This should also be evident from the calculation of the gain realized on the sale. The gain is determined in the year of sale using the law that was in effect at the time. The gain is not re-computed each year using the current law. Likewise, a reasonable reading of the law would suggest the minimum holding period does not change from the year of sale because of a subsequent change in the law.

The Tax Commission validated this interpretation in 2000 when it issued its Rules. IDAPA 35.01.01.171.02.c stated that the required holding period is determined using the law in effect for the year of sale. This rule was published and made available several months prior to the due date of the taxpayers' 2000 return. Therefore, with a general knowledge of the application of the law and the availability of the Tax Commission's interpretation through its rules, the Tax Commission does not find the law vague or ambiguous.

The taxpayers stated the Tax Commission was tardy in correcting and notifying them that a problem existed with their returns. They stated all the information to make the correction was available at the time of their original filing. If the Tax Commission had notified them at that time, they would have paid the deficiency immediately and not accrued any additional interest. However, it was almost three years after their filing before the taxpayers were notified of a problem.

In fulfilling its charge and duties (Idaho Code section 63-105), the Tax Commission makes every effort to review and analyze all the information it receives in a timely manner. Ideally, the Tax Commission would like to notify taxpayers of any tax deficiency shortly after

the end of the filing season. However, with the volume of information, the timing of receiving the information, the available technology, and the available staff, it is just not possible. Regardless, Idaho Code section 63-3068 states that a notice of deficiency can be issued within three years from the due date of the return or from the date the return was filed, whichever is later. The statute of limitations for the taxpayers' returns expires on April 16, 2004 and April 15, 2005, for 2000 and 2001 respectively. The Bureau issued its notice of deficiency on August 14, 2003. The Bureau was well within the time limit for sending a Notice of Deficiency Determination.

Interest is assessed in accordance with Idaho Code section 63-3045(6)(c) which states in pertinent part:

Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax . . .

Taxpayers argued it was the Tax Commission's tardiness that caused them to incur almost three years worth of interest. They stated it is not right and they should not be penalized. The Idaho Supreme Court in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest, the Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

Accordingly, the Tax Commission finds that interest was properly assessed in this matter.

WHEREFORE, the Notice of Deficiency Determination dated August 14, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$6,267	\$ 0	\$1,055	\$7,322
2001	970	0	88	1,058
			TOTAL DUE	\$8,380
			REMITANCE	-8,380
			BALANCE DUE	\$ <u>0</u>

Since the taxpayers have paid the deficiency, no further demand for payment is necessary.

An explanation of the taxpayer's rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]

Receipt No.
